

Fire Sprinkler Installers, Inc. and Joseph Rhodes d/b/a Rhodes Fire Sprinkler Co., Alter Egos and a Single Employer and Road Sprinkler Fitters Local Union No. 669 U.A., AFL-CIO, affiliated with United Association of Journeymen and Apprentices of the Plumbing and Pipe-fitting Industry of the United States and Canada. Case 17-CA-16716

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge and an amended charge filed by the Union on April 30, 1993, and June 8, 1993, respectively, the General Counsel of the National Labor Relations Board issued a complaint and amendment to complaint on June 9, 1993 and August 20, 1993, respectively, against Fire Sprinkler Installers, Inc., and Joseph Rhodes d/b/a Rhodes Fire Sprinkler Co., alter egos and a single Employer, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. On June 17, 1993, the Respondent filed an answer to the complaint admitting in part, and denying in part, the allegations contained therein.¹

On September 13, 1993 the General Counsel filed a motion to transfer proceeding to the Board and for Summary Judgment, with the Board. On September 15, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint and amendment to complaint affirmatively note that unless an answer is filed within 14 days of service, all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board. Further, the undisputed allegations in the Motion for Summary Judgment disclose that although the Respondent initially filed an answer to the complaint, it subsequently withdrew its answer. Such a withdrawal has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be deemed to be admitted as true. Accordingly, in the absence of good cause being

¹ The Respondent did not file an answer to the August 20, 1993 amendment to complaint. By letter dated September 3, 1993, the Respondent informed the Regional Director that it was withdrawing its answer to the complaint and indicated that no answer would be filed to the amended complaint.

shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Fire Sprinkler, a corporation, with an office and place of business in Hallsville, Missouri, has been engaged in business in the construction industry in the installation and repair of automatic fire sprinkler systems. The Respondent, Fire Sprinkler, in the course and conduct of its business operations annually purchases and receives at its Hallsville, Missouri facility and jobsites goods valued in excess of \$50,000 directly from points outside the State of Missouri and annually purchases and receives at its Hallsville, Missouri facility and jobsites goods valued in excess of \$50,000 from other enterprises located within the State of Missouri, including Grinnel, Phillips & Co., Missouri Fire, Fire Protection Supply, and Reliable, each of which enterprises had received these goods directly from points outside the State of Missouri.

During the 12-month period ending April 30, 1993, Respondent Fire Sprinkler, in the course and conduct of its business operations, provided services valued in excess of \$50,000 for Epple Construction Company, Crawford Construction, Inc., and Miller and Associates, enterprises located within the State of Missouri, each of which enterprises during that same period had received goods and services valued in excess of \$50,000 from sources located outside the State of Missouri.

At all material times, Respondent Rhodes has been owned by Joseph Rhodes, a sole proprietorship, doing business as Rhodes Fire Sprinkler Co. At all material times, Respondent Rhodes, with an office and place of business in Hallsville, Missouri, has been engaged in business in the construction industry in the installation and repair of automatic fire sprinkler systems.

Respondent Rhodes, in the course and conduct of its business operations annually purchases and receives at its Hallsville, Missouri facility and jobsites goods valued in excess of \$50,000 from other enterprises located within the State of Missouri, including Grinnel, Phillips & Co., Missouri Fire, Fire Protection Supply, and Reliable, each of which enterprises had received these goods directly from points outside the State of Missouri.

During the 12-month period ending April 30, 1993, Respondent Rhodes, in the course and conduct of its business operations provided services valued in excess of \$50,000 for Epple Construction Company, Crawford Construction, Inc., and Miller and Associates, enterprises located within the State of Missouri, each of which enterprises during that same period had received

goods and services valued in excess of \$50,000 from sources located outside the State of Missouri.

We find that Respondent Fire Sprinkler and Respondent Rhodes each has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

At all material times, Respondent Fire Sprinkler and Respondent Rhodes have been affiliated business enterprises with common officers, ownership, management, and supervision; have formulated and administered a common labor policy; have shared common premises, facilities, equipment, customers, suppliers, and employees; and have held themselves out to the public as single-integrated business enterprises.

About September 1991, Respondent Rhodes was established by Respondent Fire Sprinkler as a subordinate instrument to and a disguised continuation of Respondent Fire Sprinkler.

Based on the conduct described above, Respondent Fire Sprinkler and Respondent Rhodes are, and have been at all material times, alter egos and a single employer within the meaning of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time journeyman sprinkler fitters and apprentices employed by Respondent and engaged in the installation, dismantling, maintenance, repairs, adjustments, and corrections of all fire protection and fire control systems including the unloading, handling by hand, power equipment and installation of all piping or tubing, appurtenances and equipment pertaining thereto, including both overhead and underground water mains, fire hydrants and hydrant mains, standpipes and hose connections to sprinkler systems, sprinkler tank heaters, air lines and thermal systems used in connection with sprinkler and alarm systems, also all tanks and pumps connected thereto, and also included shall be CO-2 and Cardox systems, Dry Chemical Systems, Foam Systems and all other fire protection systems except steam fire protection systems, excluding clerical employees, guards and supervisors within the meaning of the Act.

At all material times, the National Fire Sprinkler Association, Inc. (NFSA) has been an organization composed of various employers engaged in the construction industry installing fire sprinklers, one purpose of which is to represent its employer-members, and other employers who agree to be bound, in negotiating and

administering collective-bargaining agreements with the Union.

On or about March 22, 1991, the Union and the Respondent entered into an agreement entitled "Assent and Interim Agreement" wherein the Respondent acknowledged having verified the Union's status as the exclusive bargaining representative of its employees pursuant to Section 9(a) of the Act and agreed to be bound by the terms and conditions of any new national construction agreement (NCA) reached between the Union and the NFSA, amending and/or modifying the 1988-1991 NCA between the Union and the NFSA.

By virtue of the terms of the assent and interim agreement, the Respondent became bound to the terms of the NCA between the Union and NFSA, effective April 1, 1991, to March 31, 1994.

At all times since on or about March 22, 1991, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Since about October 30, 1992, the Respondent has withdrawn its recognition of the Union as the exclusive collective-bargaining representative of the unit.

Since about October 30, 1992, the Respondent has failed to continue in effect all of the terms and conditions of the agreement including failing to pay the wage rates; failing to make contributions to the National Automatic Sprinkler Industry Welfare Fund, National Automatic Sprinkler Industry Pension Fund, NASI-Local 669 Industry Education Fund, and the Sprinkler Industry Supplemental Defined Contribution Pension Fund; and failing to maintain any other terms and conditions of employment set forth therein.

The terms and conditions of employment set forth above are mandatory subjects for the purpose of collective bargaining.

The Respondent engaged in the conduct described above without the Union's consent.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease

and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent shall be ordered to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees and to honor and abide by the terms of the collective-bargaining agreement with the Union.

Having found that the Respondent has violated Section 8(a)(1) and (5) by failing to make contractually required wages and contributions to the National Automatic Sprinkler Industry Welfare Fund, National Automatic Sprinkler Industry Pension Fund, NASI-Local 669 Industry Education Fund, and the Sprinkler Industry Supplemental Defined Contribution Pension Fund, we shall order the Respondent to make whole its unit employees by making all contractual payments that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any delinquent payments to the funds as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Fire Sprinkler Installers, Inc., and Joseph Rhodes d/b/a Rhodes Fire Sprinkler Co., Alter Egos and a Single Employer, Hallsville, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO affiliated with United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, as the exclusive collective-bargaining representative of the employees in the appropriate unit and refusing to abide by the terms of the collective bargaining agreement with the Union. The appropriate unit consists of:

All full-time and regular part-time journeyman sprinkler fitters and apprentices employed by Respondent and engaged in the installation, dismantling, maintenance, repairs, adjustments, and corrections of all fire protection and fire control systems including the unloading, handling by hand, power equipment and installation of all piping or tubing, appurtenances and equipment pertaining thereto, including both overhead and underground

water mains, fire hydrants and hydrant mains, standpipes and hose connections to sprinkler systems, sprinkler tank heaters, air lines and thermal systems used in connection with sprinkler and alarm systems, also all tanks and pumps connected thereto, and also included shall be CO-2 and Cardox systems, Dry Chemical Systems, Foam Systems and all other fire protection systems except steam fire protection systems, excluding clerical employees, guards and supervisors within the meaning of the Act.

(b) Failing to continue in effect all of the terms and conditions of the agreement since about October 30, 1992, including failing to pay the wage rates.

(c) Failing to make contractually required contributions to the National Automatic Sprinkler Industry Welfare Fund, National Automatic Sprinkler Industry Pension Fund, NASI-Local 669 Industry Education Fund, and the Sprinkler Industry Supplemental Defined Contribution Pension Fund.

(d) Failing to maintain any other terms and conditions of employment set forth in the agreement.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act. By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Continue in effect all of the terms and conditions of the agreement since about October 30, 1992, including failing to pay the wage rates.

(b) Make whole the unit employees by making delinquent contributions to the National Automatic Sprinkler Industry Welfare Fund, National Automatic Sprinkler Industry Pension Fund, NASI-Local 669 Industry Education Fund, and the Sprinkler Industry Supplemental Defined Contribution Pension Fund and by reimbursing the employees for any expenses ensuing from the Respondent's unlawful failure to make such payments, in the manner set forth in the remedy section of this Decision and Order.

(c) Maintain any other terms and conditions of employment set forth in the agreement.

(d) Preserve and, on request, make available to the Board or its agents for examining and copying, all payroll records, social security payment records, timecards, personnel records and reports, trust and benefit fund statements, and all other documents or records

necessary to analyze the amount of payments due under the terms of the Board's Order.

(e) Post at its facility in Hallsville, Missouri, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. September 30, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to recognize and bargain in good faith with Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO, affiliated with United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada as the exclusive collective-bargaining representative of our employees in the appropriate bargaining unit, and WE WILL NOT refuse to abide by the terms of our collective-bargaining agreement with the Union. The appropriate bargaining unit consists of:

All full-time and regular part-time journeyman sprinkler fitters and apprentices employed by us and engaged in the installation, dismantling, maintenance, repairs, adjustments, and corrections of all fire protection and fire control systems including the unloading, handling by hand, power equipment and installation of all piping or tubing, appurtenances and equipment pertaining thereto, including both overhead and underground water mains, fire hydrants and hydrant mains, standpipes and hose connections to sprinkler systems, sprinkler tank heaters, air lines and thermal systems used in connection with sprinkler and alarm systems, also all tanks and pumps connected thereto, and also included shall be CO-2 and Cardox systems, Dry Chemical Systems, Foam Systems and all other fire protection systems except steam fire protection systems, excluding clerical employees, guards and supervisors within the meaning of the Act.

WE WILL NOT fail to continue in effect all of the terms and conditions of the agreement since about October 30, 1992, including failing to pay the wage rates.

WE WILL NOT fail to make contractually required contributions to the National Automatic Sprinkler Industry Welfare Fund, National Automatic Sprinkler Industry Pension Fund, NASI-Local 669 Industry Education Fund, and the Sprinkler Industry Supplemental Defined Contribution Pension Fund.

WE WILL NOT fail to maintain any other terms and conditions of employment set forth in the agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL continue in effect all of the terms and conditions of the agreement since about October 30, 1992, including paying the specified wage rates.

WE WILL make whole the unit employees by making delinquent contributions to the National Automatic Sprinkler Industry Welfare Fund, National Automatic Sprinkler Industry Pension Fund, NASI-Local 669 Industry Education Fund, and the Sprinkler Industry Supplemental Defined Contribution Pension Fund and by reimbursing the employees for any expenses ensuing from the our unlawful failure to make such payments, with interest.

WE WILL maintain any other terms and conditions of employment set forth in the agreement.

FIRE SPRINKLER INSTALLERS, INC. AND
JOSEPH RHODES D/B/A RHODES FIRE
SPRINKLER CO., ALTER EGOS AND A
SINGLE EMPLOYER